

UNIFORM UNCLAIMED PROPERTY ACT (1995)

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

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IN ALL THE STATES

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM UNCLAIMED PROPERTY ACT (1995)

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UNIFORM UNCLAIMED PROPERTY ACT (1995)

PREFATORY NOTE

Statement of the History of the Act

This Act is preceded by the 1954 Uniform Disposition of Unclaimed Property Act (1954), which was revised in 1966, and the Uniform Unclaimed Property Act (1981). The 1954 Act was drafted during a period of conflicting legislation among the various States and several Supreme Court decisions in the late 1940's and early 1950's. In 1965, these conflicts were resolved by the decision in *Texas v. New Jersey*, 379 U.S. 674 (1965), which established a set of priorities for claimant States. These rules of priority were then adopted in the 1981 Act. They were re-examined and reaffirmed in *Delaware v. New York*, _____ U.S. _____, 113 S.Ct. 1550, 123 L.Ed.2d 211 (1993). Although the *Delaware* Court made no change in the rules of priority, it clarified the issue of how to determine the identity of the "debtor" -- the "holder" under this Act -- when payments by intermediaries are at stake. The "debtor" will be defined by reference to the state law that creates the property interest; an intermediary which holds property in its own name will generally be the debtor, and not the original obligor which has satisfied its obligation by transmitting payment to the intermediary. *Delaware v. New York* also makes it clear that no State may supersede the Court's priority rules by seeking to establish different priorities under state law. See Comments to Section 1 and Section 4 for further discussion of these rules.

This Act retains the custodial features of the 1954 Act and the 1981 Act. Thus, the State does not take title to unclaimed property, but takes custody only, and holds the property in perpetuity for the owner.

A State may enforce its claim of custody in the courts of other jurisdictions, see *Commonwealth of Pennsylvania v. Kervick*, 60 N.J. 289, 288 A.2d 289 (1972), or in its own courts. Even if a holder does not do business in the State, that State should be able to require the holder to report and deliver unclaimed property in the State, under the *Texas v. New Jersey* rationale, based on the common law rule of *mobilia sequuntur personam*: the right of succession to personal property is governed by the law of the owner's domicile. See also *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541, 546-47 (1947), where the Supreme Court described the State as a "conservator" when claiming property under a custodial unclaimed property law. The Court in *Standard Oil Co. v. New Jersey*, 347 U.S. 428, 437 (1951), characterized the Moore case as involving a "conservation statute." See generally Epstein, McThenia and Forslund, "Unclaimed Property Law and Reporting Forms," sections 2.01, 3.02, 4.01 (Matt. Bend. 1984).

UNIFORM UNCLAIMED PROPERTY ACT (1995)

SECTION 1. DEFINITIONS. In this [Act]:

- (1) "Administrator" means [insert name of appropriate officer].
- (2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.
- (3) "Business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, [land bank], safe deposit company, [safekeeping depository], financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.
- (4) "Domicile" means the State of incorporation of a corporation and the State of the principal place of business of a holder other than a corporation.
- (5) "Financial organization" means a savings and loan association, [building and loan association, savings bank, industrial bank,] bank, banking organization, or credit union.
- (6) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this [Act].
- (7) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.
- (8) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material;

gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this State.

(9) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

(i) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(ii) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(iii) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(10) "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(11) "Owner" means a person who has a legal or equitable interest in property subject to this [Act] or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(12) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Property" means tangible property described in Section 3 or a fixed and certain

interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

(i) money, a check, draft, deposit, interest, or dividend;

(ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

(iii) stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) a bond, debenture, note, or other evidence of indebtedness;

(v) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(vi) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(vii) an amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Utility" means [a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas] [insert cross reference to statute defining public utility].

Comment

The definitions reflect, pursuant to *Texas v. New Jersey*, 379 U.S. 674, 85 S.Ct. 626, 13 L.Ed. 2d 596 (1965), the fact that the Act applies to persons in other States who are holding property, eliminating any requirement that those persons be engaged in business in the enacting State. The obligation of a holder to report to all States in which a creditor had an address, or in which a transaction took place, or which is the holder's domicile, is now well established in the abandoned property statutes of the States and in the decisions of the Supreme Court. The holder's obligation to report is not confined to situations where the holder is authorized to do business or actually transacts business in a State. These jurisdictional rules are spelled out in detail in Section 4.

Paragraph (2) defines "apparent owner" in terms of reference to the person who appears on the holder's records to be the person entitled to the property. The right of a State to claim abandoned property depends on the information in the holder's records concerning the apparent owner's identification. It is of no consequence that without notice to the holder, the owner may have transferred the property to another person. In *Nellius v. Tampax, Inc.*, 394 A.2d 333 (Del. Ch. Ct. 1978), the court held that the address of the apparent, not the actual, owner controlled. The holder is not required to ascertain the name of the current owner or resolve a dispute between the owner of record and a successor contesting ownership. However, nothing in this Act prohibits the actual owner from recovering the property, pursuant to Sections 10 and 15, from the holder or the administrator. Similarly, the State of last known address of the actual owner can recover the property, pursuant to Section 14, from the State which initially receives custody.

The definition of "business association" in paragraph (3) expressly includes mutual funds, which previously were covered in general terms.

The definition of "holder" in paragraph 5 is a clarification. There had been some confusion in the past over the identity of the holder of an obligation that had been transferred by the original obligor, as in the payment of dividends on corporate stock. As held by the Supreme Court in *Delaware v. New York*, the holder is the person indebted under the applicable state law. Thus, if the original debtor, the dividend-paying corporation, has satisfied its debt under its share contract and under state law by transmitting payment to an intermediary, which has undertaken to make the payment, the intermediary becomes the debtor. The holder thus is "a person obligated," *i.e.*, a person who could be sued successfully by the owner for refusing to make payment.

Although the 1981 Act defined "last known address" as "a description of the location of the apparent owner sufficient for the purpose of the delivery of mail," that Act indicated some

uncertainty over whether this was an accurate interpretation of *Texas v. New Jersey*, since this definition was accompanied by a Commissioners' Comment that appeared to be at odds with the definition itself. Thus, the Comment stated that "Where a holder originally had the address of the owner and it has been subsequently destroyed, a computer code may be one way of establishing an address within the state." "Last known address" is no longer defined in the Act; instead, the sections dealing with the jurisdictional rules (Sections 4 and 14) are rewritten so that they define, individually, the rules of the States' priorities of taking.

The touchstone of those rules of priority is *Texas v. New Jersey*, 379 U.S. 674, 85 S.Ct. 626, 13 L.Ed. 2d 596 (1965), in which the Court established as a primary rule that unclaimed property goes to "the State of the last known address of the creditor, as shown by the debtor's books and records." *Id.* at 681-82, 85 S.Ct. at 631, 13 L.Ed. 2d at 601. Where the debtor has "no record of any address at all," the state of corporate domicile could take, *id.* at 682, 85 S.Ct. at 631, 13 L.Ed. 2d at 601, subject to proof by another State "that the last known address of the creditor was within its borders." *Id.*, 13 L.Ed. 2d at 602. See also *Pennsylvania v. New York*, 407 U.S. 206, 32 L.Ed. 2d 693, 92 S.Ct. 2075 (1972).

In *Delaware v. New York*, the Court reaffirmed the rules of *Texas v. New Jersey*: Delaware, as the State of corporate domicile, would take the property initially where the holder's records did not contain a last known address. That delivery of the property to Delaware, however, would not cut off the rights of another State to later claim the property from Delaware. For instance:

On remand, if New York can establish by reference to debtors' records that the creditors who were owed particular securities distributions had last known addresses in New York, New York's right to escheat under the primary rule will supersede Delaware's right under the secondary rule. As we noted in *Texas*, "the State of corporate domicile should be allowed to . . . retain the property for itself only until some other State comes forward with proof that it has a superior right to escheat." 379 U.S., at 682. Accord, *Pennsylvania*, 407 U.S., at 210-211. If New York or any other claimant State fails to offer such proof on a transaction-by-transaction basis or to provide some other proper mechanism for ascertaining creditors' last known addresses, the creditor's State will not prevail under the primary rule, and the secondary rule will control.

Id. at ____, 113 S.Ct. at 1561-62, 123 L.Ed. 2d at 227-28. (Deletions in original.)

In sum, *Delaware v. New York* requires that some "proper mechanism" show that the owner had an address within the State that asserts a primary claim. A computer code would appear to be such a means of proof. On the other hand, showing that the transaction took place in the State would not be sufficient proof of an owner's address. *Pennsylvania v. New York*, 407 U.S. 206, 92 S.Ct. 2075, 32 L.Ed. 2d 693 (1972).

For purposes other than these jurisdictional rules -- i.e., the holder's duties of reporting and maintenance of records and the States' duties of publication -- the "last known address" will depend on the nature and extent of the holder's records. Thus, the holder will include in its report the best address it has, which may or may not include a street address, or, for example, an "E

mail" address.

The definition of "money order" in paragraph (10) is designed to distinguish between personal money orders issued by business entities which are not financial organizations, which have a seven year holding period, and those issued by financial organizations, which have a five year holding period.

The Act provides exclusively for the disposition of unclaimed intangible property and does not apply to tangible property, with one exception: Section 3 applies to tangible property contained in safe deposit boxes. Paragraph (12), defining property, is not intended as a substantive addition to the coverage of the 1981 Act. It is, however, intended to be all-inclusive; the descriptions of property interests that are set forth as examples are not limiting, but are stated to help holders identify kinds of property interests which otherwise may be overlooked. Thus, "property" is not the check, note, certificate or other document that evidences the property interest, but the underlying right or obligation. See *Blue Cross of Northern California v. Cory*, 120 Cal. App. 3d 723, 174 Cal. Rptr. 901 (1981) ("right to be paid" is the "'intangible personal property' (or 'chase in action') . . . which is recognized in the UPL"). The requirement that the right be "fixed and certain" excludes unliquidated claims from the coverage of the Act, such as disputed tort claims.

Many States already have laws that define utilities. Paragraph (15) gives a State the option to adopt the Act's definition of a utility, or another definition contained in existing law. The term is intended to be broadly applied.

SECTION 2. PRESUMPTIONS OF ABANDONMENT.

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) traveler's check, 15 years after issuance;

(2) money order, seven years after issuance;

(3) stock or other equity interest in a business association or financial

organization, including a security entitlement under [Article 8 of the Uniform Commercial Code], five years after the earlier of (i) the date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner, or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent

owner;

(4) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) a demand, savings, or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property; but a deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(6) money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(7) gift certificate, three years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be [60] percent of the certificate's face value;

(8) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(9) property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

(10) property received by a court as proceeds of a class action, and not distributed

pursuant to the judgment, one year after the distribution date;

(11) property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(12) wages or other compensation for personal services, one year after the compensation becomes payable;

(13) deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(14) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(15) all other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(b) At the time that an interest is presumed abandoned under subsection (a), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in subsection (a), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its

representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(d) An indication of an owner's interest in property includes:

(i) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(ii) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(iii) the making of a deposit to or withdrawal from a bank account; and

(iv) the payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(e) Property is payable or distributable for purposes of this [Act] notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

Comment

Section 2 continues the general proposition that all intangible property is within the coverage of this Act. It provides in a single section for all the various periods of abandonment that were separately stated in several sections of the 1981 Act. With limited exceptions this reorganization does not alter the bases for presuming abandonment of the property from that

established in the 1981 Act, but merely restates those standards in a unified section, more easily applied, with less repetition. One exception is that whereas the 1981 Act exempted from the presumption of abandonment certain property held by a bank if the bank held other property of the depositor not presumptively abandoned, the present Act does not. It was the conclusion of the Commissioners that an owner's knowledge of some property does not necessarily imply knowledge of all his or her property held by the bank, and that the owner is entitled to the protection of this Act as to all the owner's property.

This section treats underlying bond obligations the same as underlying stock, except as to bearer bonds and original issue discount bonds. Thus, registered interest paying bonds will be presumed abandoned five years after the date of an unrepresented instrument issued to pay interest. In the case of bearer bonds, however, although interest held on deposit for more than five years that has not been paid out as a result of failure to present a coupon for payment will be considered abandoned, the underlying principal represented by the bearer certificate, provided such certificate is not held by an agent due to a mail return or other similar circumstance, will not be considered abandoned even if the coupons that were attached to that certificate at the time of original issuance have not been presented for payment. Where interest is accrued but not paid until the return of principal at the time the obligation matures or is called, and there is no making of periodic interest payments, there is not the same motivation for bond holders to communicate with the trustee or paying agent as in the case of interest paying bonds, and a lack of communication should not give rise to a presumption of abandonment. Therefore, bearer bonds and original issue discount bonds are excluded from paragraph (4) of this section, and will fall instead under paragraph (15). Those bonds will be presumed abandoned five years after the issuer's obligation to pay arises, i.e., five years after call or maturity.

The 1981 Act shortened the general dormancy period from 7 years to 5 years. Certain exceptions continue to be appropriate. For instance, statistical evidence indicates that a period of 15 years continues to be appropriate in the case of travelers checks, and seven years in the case of personal money orders and money orders issued by express companies. Also, in certain instances shorter periods are appropriate. For instance, the likelihood of finding the owner of a payroll check is materially decreased after one year. Hence, there is a one year dormancy period for unclaimed wages. Coverage of consumer credits is specifically provided, which is a clarification of the 1981 Act. The term covers credits owed on consumer transactions such as returns of merchandise, cancellation of layaways, and various kinds of deposits. The existence and amounts of such credits will of course be dependent on the terms of the contract between the holder and the consumer.

The dormancy period for unpaid distributions from retirement accounts and plans has been modified to shorten the period of presumed abandonment from five to three years, since an earlier date of presumed abandonment should be of assistance in assuring that the assets of the plan are ultimately claimed by their owner.

Because the unclaimed property laws are matters of traditional state powers, are laws of general application, and have only a tenuous, remote and peripheral impact on ERISA plans, it has been held that they are not pre-empted by federal law. *Aetna Life Ins. Co. v. Borges*, 869 F.2d 142 (2nd Cir. 1989); *Attorney General v. Blue Cross and Blue Shield of Michigan*, 168

Mich. App. 372, 424 N.W.2d 54 (Ct. App. 1988), *appeal denied*, No. 83788 (March 31, 1989). These cases declined to follow two advisory opinions to the contrary, issued by the Department of Labor (Opinions 78-32A, December 22, 1978, and 79-30A, May 14, 1979). Thereafter, notwithstanding the Second Circuit and Michigan decisions, the Department continued to adhere to its position that unclaimed property laws "relate to" ERISA, and are thus pre-empted, in a letter opinion issued March 3, 1995. 22 BNA Pension & Benefits Reporter 743 (1995). That opinion relied on *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990), as holding that pre-emption extended to state laws that had only an indirect economic affect on ERISA plans. Subsequently, the Supreme Court in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, ___ U.S. ___ (63 Law Week 4372, April 26, 1995), expounded a much narrower meaning of *Ingersoll-Rand*. The case held that ERISA does not pre-empt the imposition of statutorily-mandated surcharges on bills of hospital patients whose commercial insurance coverage is purchased by an ERISA plan, or on HMOs insofar as their membership fees are paid by an ERISA plan. The Court emphasized that even though such state statutes would affect choices made by plan administrators, the ERISA pre-emption was not so broad as to nullify those state laws. The Court emphasized the basic presumption that "Congress does not intend to supplant state law" (63 LW at 4374). The Court said that *Ingersoll-Rand* does not hold that "merely economic influence" on administrative decisions will trigger pre-emption. (63 LW at 4376.) *Ingersoll-Rand* was explained to hold only that pre-emption would be found where state law produced "such acute, albeit indirect, economic effects" as to force a certain substantive scheme of coverage or effectively restrict insurance choices. (*Id.* at 4375.) Thus, "the basic thrust of the [ERISA] pre-emption clause, then, was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." (*Id.* at 4375.) See also *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988), holding that ERISA does not pre-empt a state garnishment statute under which a creditor may reach plan participants' benefits. A state claim under its unclaimed property law would appear to be no more intrusive to the federal regulatory scheme than its garnishment laws. Accordingly, with one exception, the final distribution of assets of a terminated plan, which is governed by 29 U.S.C. sec. 1350, this Act presumes that it is not pre-empted by ERISA.

Intangible property held by a utility other than subscribers' deposits and refunds are subject to the five year rule of subsection (a)(15).

Subsection (e) is intended to make clear that property is reportable notwithstanding that the owner, who has lost or otherwise forgotten his or her entitlement to property, fails to present to the holder evidence of ownership or to make a demand for payment. See *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541 (1948), in which the Court stated: "When the state undertakes the protection of abandoned claims, it would be beyond a reasonable requirement to compel the state to comply with conditions that may be quite proper as between the contracting parties." See also *Provident Institution for Savings v. Malone*, 221 U.S. 660 (1911), involving savings account; *Insurance Co. of North America v. Knight*, 8 Ill. App. 3d 871, 291 N.E.2d 40 (1972), involving negotiable instruments, and *People v. Marshall Field & Co.*, 83 Ill. App. 3d 811, 404 N.E.2d 368 (1980), involving gift certificates. With respect to gift certificates, see also Section 19(a), which invalidates private periods of limitation. Thus, gift certificates will be reportable notwithstanding language on the certificate purporting to avoid escheat by creating an expiration date prior to the time of presumed abandonment. Section (c) also obviates the result

reached in *Oregon Racing Comm. v. Multonamah Kennel Club*, 242 Or. 572, 411 P.2d 63 (1963), involving unpresented winning parimutuel tickets.

Since the holder is indemnified against any loss resulting from the delivery of the property to the administrator, no possible harm can result in requiring that holders turn over the property, even though the owner has not presented proof of death or surrendered the insurance policy, savings account passbook, the gift certificate, winning racing ticket, or other memorandum of ownership.

SECTION 3. CONTENTS OF SAFE DEPOSIT BOX OR OTHER

SAFEKEEPING DEPOSITORY. Tangible property held in a safe deposit box or other safekeeping depository in this State in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, are presumed abandoned if the property remains unclaimed by the owner for more than five years after expiration of the lease or rental period on the box or other depository.

Comment

Section 3 parallels Section 2(d) of the 1966 Act and Section 16 of the 1981 Act. This section is not intended to cover property left in places other than safekeeping depositories, for example, airport lockers or field warehouses. Its coverage is limited to tangible property held in safe deposit boxes in banks and financial institutions. Intangible property, evidence of which is found in a safe deposit box, is covered by Section 2.

SECTION 4. RULES FOR TAKING CUSTODY. Except as otherwise provided in this [Act] or by other statute of this State, property that is presumed abandoned, whether located in this or another State, is subject to the custody of this State if:

(1) the last known address of the apparent owner, as shown on the records of the holder, is in this State;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this State;

(3) the records of the holder do not reflect the last known address of the apparent owner and it is established that:

(i) the last known address of the person entitled to the property is in this State; or

(ii) the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State and has not previously paid or delivered the property to the State of the last known address of the apparent owner or other person entitled to the property;

(4) the last known address of the apparent owner, as shown on the records of the holder, is in a State that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(6) the transaction out of which the property arose occurred in this State, the holder is domiciled in a State that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a State that does not provide for the escheat or custodial taking of the property; or

(7) the property is a traveler's check or money order purchased in this State, or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a State that does not provide for the escheat or custodial taking of the property, or do not show the State in which the instrument was purchased.

Comment

Section 4 describes the general circumstances under which a State may claim abandoned intangible property. This section closely follows the language of *Texas v. New Jersey*, in which the court reasoned that unclaimed property is an asset of the creditor and should generally be paid to the creditor State, i.e., the State of residence of the apparent owner. Consistent with that reasoning it held that unclaimed intangible property is subject to escheat or custody as unclaimed property first by the State of the owner's last known address. (See Section 1(7) and the Comment with regard to "last known address.") If that State cannot claim the property, the State of the holder's domicile is entitled to custody. Consistent with the court's concern for a simple rule which would avoid the complexities of proving domicile and residence the court established the priority on the basis of information contained in the holder's records. Where the holder's records do not show that the owner had an address within the State, the second priority claimant, the State of domicile of the holder, is entitled to claim the property. Another State can later assume custody from the State of the holder's domicile by showing that the last known address of the owner was within its borders. Likewise, if the State of last known address does not have an unclaimed property law which applies to the property, the State of the holder's domicile can take the property, again subject to the right of the State of last known address to recover the property if and when it enacts an unclaimed property or escheat law.

Paragraph (1) restates the factual situation in *Texas v. New Jersey*. As the court there said ". . . the address on the records of a debtor, which in most cases will be the only one available, should be the only relevant last known address."

Paragraph (2) covers the situation in which, on the basis of the holder's records, the identity of the person entitled to the property is unknown, and the holder therefore reports to the State of its domicile, but it is later established by another State that the property was owned by or payable to a person whose last known address was within the claiming State. This is a rational extension of *Texas v. New Jersey*. Reunification of the owner with his or her property in this circumstance is impossible, and insofar as that issue is concerned, it makes no difference whether the property is delivered to the State of the holder's domicile or the State of the owner's last known address. However, following the equitable concept of distributing unclaimed property among creditor States articulated by the Supreme Court in *Texas v. New Jersey*, and reaffirmed in *Delaware v. New York*, the subsection directs that where there is no record of a name but there is a record that the last known address was within the State, that State where the owner had an address can claim the property.

Paragraph (3) is the secondary rule of *Texas v. New Jersey*. The Supreme Court ruled that when property is owed to persons for whom there are no addresses, the property will be subject to escheat by the State of the holder's domicile, provided that another State may later claim upon proof that the last known address of the person entitled to the property was within its borders.

Paragraph (4) provides that if the law of the State of the owner's last known address does not provide for escheat or taking custody of the unclaimed property or if that State's escheat or unclaimed property law is not applicable to the property in question, the property is subject to claim by the State in which the holder is domiciled. In that instance, the State of the owner's last

known address may thereafter claim the property if it enacts an applicable unclaimed property law. The holder State will act as custodian and pay or deliver the property to the owner or the State which has priority under *Texas v. New Jersey* upon request. As held in *State v. Liquidating Trustees of Republic Petroleum Co.*, 510 S.W.2d 311 (Texas 1974), *Texas v. New Jersey* dealt only with conflicting claims of two or more States, and provides no basis for a holder to object to the claim of its State of domicile by asserting that another State has a superior claim, if the holder has not already reported the property to that other State. Therefore a State which claims custody on the ground that it is the holder's domicile is not required to prove that the laws of some or all of the other 49 States do not "provide" for the taking of the property; if the holder has not reported and paid the property to another State, as between the domiciliary State and the holder, it will be presumed that such other State's laws do not apply. If another State does claim the property, it may of course proceed under Section 14.

Paragraph (5) provides that when the last known address of the apparent owner is in a foreign nation the State in which the holder is domiciled may claim the property. This issue was not dealt with by the Supreme Court in *Texas v. New Jersey*, but is a rational extension of that ruling.

Paragraph (6) provides for a situation in which neither of the priority claims discussed in *Texas v. New Jersey* can be made, but the State has a genuine and important contact with the property. An example of the type of claim which might be made under paragraph (6) arose in *O'Connor v. Sperry & Hutchinson Co.*, 412 A.2d 539 (Pa.1980). There Pennsylvania sought to escheat unredeemed trading stamps sold by a corporation domiciled in New Jersey to retailers located in Pennsylvania. Pennsylvania took the position that *Texas v. New Jersey* did not create a jurisdictional bar to escheat by other States when the States granted priority were unable to take. There was no first priority claim since there were no addresses of the trading stamp purchasers. The second priority claimant, the State of corporate domicile (New Jersey), was not permitted under its law to escheat trading stamps (see *New Jersey v. Sperry & Hutchinson Co.*, 56 N.J.Super. 589, 153 A.2d 691 (1959), *affirmed per curiam*, 31 N.J. 385, 157 A.2d 505 (1960)) and hence Pennsylvania urged that in order to prohibit a corporate windfall it should be allowed to claim this property. The Pennsylvania Supreme Court affirmed a lower court decision which overruled *Sperry & Hutchinson's* motion to dismiss but did not reach the *Texas v. New Jersey* issue.

Gift certificates, unused airline tickets, and other property for which there is no last known address may be claimed by the State where the purchase was made if the State of corporate domicile does not have an abandoned property law covering the property in question under paragraph (6).

Travelers checks and money orders are covered under paragraph (7), which states the rule adopted by Congress in 12 U.S.C. sections 2501 *et seq.* The congressional action was in response to the Supreme Court decision in *Pennsylvania v. New York*, 407 U.S. 206 (1972), which held that the State of corporate domicile was entitled to escheat money orders when there was no last known address of the purchaser although the property had been purchased in other States. Paragraph (7), pursuant to the congressional mandate, substitutes as the test for asserting a claim to travelers checks and money orders the place of purchase rather than the State of

incorporation of the issuer.

Wholly foreign transactions are excluded from the coverage of the Act. See Section 26.

SECTION 5. DORMANCY CHARGE. A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

Comment

This section is consistent with those cases which have ruled on the issue of service charges under the 1966 Act and the 1981 Act. Section 5 is a limitation on the deduction of charges based solely on dormancy and is applicable to all intangible property presumed abandoned. This section, which applies to all unclaimed property, replaces similar limitations that were specifically focused on various types of property in the 1981 Act. The limitation of a service charge to an amount that is not unconscionable is new and is drawn from Article 2, Section 302, of the Uniform Commercial Code.

SECTION 6. BURDEN OF PROOF AS TO PROPERTY EVIDENCED BY RECORD OF CHECK OR DRAFT. A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

Comment

This provision clarifies the burden of proof in situations where the obligation evidenced by a negotiable instrument is disputed by the holder, and is consistent with cases which have ruled on the matter. See *Insurance Co. of North America v. Knight*, 8 Ill.App.3d 871, 291

N.E.2d 40 (1972), *app. dismissed* 414 U.S. 804, 38 L.Ed.2d 40, 94 S.Ct. 165 (1973), *Blue Cross of Northern Cal. v. Cory*, 120 Cal. App.3d 723, 174 Cal. Rptr. 901 (1981), and *Revenue Cabinet v. Blue Cross & Blue Shield*, 702 S.W.2d 433, 435 (Ky. 1986). See also *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229 (D.C. App. 1990). It is also consistent with the cases holding that when claiming abandoned property the State steps into the shoes of the owner (see Epstein, McThenia and Forslund, "Unclaimed Property and Reporting Forms," sec. 3.02 (Matt. Bend. 1984), and Article 3-308 of the Uniform Commercial Code. Under U.C.C. Section 3-308(2), "When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense." The reason for requiring a plaintiff to produce the instrument is "to show that the plaintiff is in fact the holder, and in order to protect the defendant from double liability." 6 Anderson, Uniform Commercial Code, sec. 3-307:4, p. 158 (3rd ed., 1993). The administrator, by proving issuance of the instrument, succeeds to all rights of the payee. Because the issuer is relieved of all liability on the instrument by paying the obligation to the State as unclaimed property, and is indemnified by the State, there is no chance that the issuer would be held liable twice, and therefore the administrator is not required to produce the instrument in order to possess the same rights as a holder in due course.

SECTION 7. REPORT OF ABANDONED PROPERTY.

(a) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(b) The report must be verified and must contain:

(1) a description of the property;

(2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of \$50 or more;

(3) an aggregated amount of items valued under \$50 each;

(4) in the case of an amount of \$50 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the

administrator, and any amounts owing to the holder;

(6) the date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(7) other information that the administrator by rule prescribes as necessary for the administration of this [Act].

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to this [Act], if:

(1) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(2) the claim of the apparent owner is not barred by a statute of limitations; and

(3) the value of the property is \$50 or more.

(f) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim

payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(g) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (e).

Comment

The \$50 minimum provided in subsection (b)(1), (2), and (3) represents an increase from \$3.00 in the 1966 Act and \$25 in the 1981 Act in order to minimize reporting expenses. Almost every State which enacted the prior Uniform Act now provides for a \$25 minimum.

Before filing its report, the holder must send written notice to the apparent owner, if the owner's claim is not barred by the statute of limitations, the property has a value of \$50 or more, and the holder's records do not disclose the address to be inaccurate. Other efforts to locate the owner are no longer required.

Subsection (f) provides new flexibility to the holder and to the administrator in cases where the holder's timely compliance is not feasible. In the past, some administrators have felt themselves to be without authority to extend the filing deadlines, or to accept less than a final report. It is now made clear that an extension can be had for good cause, and the holder can limit its exposure to interest by making a partial payment.

SECTION 8. PAYMENT OR DELIVERY OF ABANDONED PROPERTY.

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by Section 7, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until [120] days after filing the report required by Section 7.

(b) If the property reported to the administrator is a security or security entitlement under

[Article 8 of the Uniform Commercial Code], the administrator is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with [Article 8 of the Uniform Commercial Code].

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to [Section 8-405 of the Uniform Commercial Code], but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with Section 10.

Comment

Subsections (b) and (c) particularize the general duty stated in subsection (a) with respect to investment securities, including securities positions held directly and securities positions held through accounts with brokers or other intermediaries (referred to as security entitlements" under revised Article 8 of the Uniform Commercial Code). UCC Article 8 provides that the issuer of a security, or intermediary with respect to a security entitlement, has a duty to act at the direction of the "appropriate person." Subsection (b) provides that with respect to securities and security entitlements that have been reported as abandoned property pursuant to Section 7, the administrator is an "appropriate person." Accordingly, the administrator has the same rights under UCC Article 8 as other persons who succeed by operation of law to securities or security entitlements, such as the executor or administrator of a decedent. Subsection (c) deals with situations where the holder reporting abandoned property is itself the issuer of a certificated security, and hence does not have the original certificate to turn over to the administrator. Accordingly, subsection (b) provides that the administrator can invoke the provisions of UCC Article 8 governing replacement certificates, without an indemnity bond.

Subsection (d) indemnifies a person causing a replacement certificate to be issued to the administrator from any claims that the person acted wrongfully in so doing. This indemnification is desirable in that it eliminates any duty of the transferring authority to make an independent investigation into whether the listed owner of the security is in fact missing, or into other factors which might affect the administrator's right to obtain custody of the property.

**SECTION 9. NOTICE AND PUBLICATION OF LISTS OF ABANDONED
PROPERTY.**

(a) The administrator shall publish a notice not later than November 30 of the year next following the year in which abandoned property has been paid or delivered to the administrator. The notice must be published in a newspaper of general circulation in the [county] of this State in which is located the last known address of any person named in the notice. If a holder does not report an address for the apparent owner, or the address is outside this State, the notice must be published in the [county] in which the holder has its principal place of business within this State or another [county] that the administrator reasonably selects. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The form must contain:

(1) the name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;

(2) the last known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;

(3) a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(4) a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(b) The administrator is not required to advertise the name and address or location of an owner of property having a total value less than \$50, or information concerning a traveler's check, money order, or similar instrument.

Comment

This section sets forth the minimum requirements for advertisement. The administrator may publish more frequently or extensively. The Act does not establish a specific time for the publication so that the administrator can choose a time that will provide the best exposure and flexibility in scheduling the workload and personnel available.

The advertisement must contain a minimum of two items of information, one of which explains that the abandoned property has been paid into the protective custody of the administrator. Since abandoned property is delivered with the report under the revisions of this Act, this statement is necessary to explain the location of the property and to insure that inquiries are directed to the administrator.

Subsection (b) limits the duty to advertise in recognition of the fact in the specified circumstances the value of the property is so slight as to negate the benefits of the advertising, or the names and addresses of the owners of the instruments are not maintained by the holder, or in the case of travelers checks, after 15 years the advertisement is unlikely to be productive.

SECTION 10. CUSTODY BY STATE; RECOVERY BY HOLDER; DEFENSE OF HOLDER.

(a) In this section, payment or delivery is made in "good faith" if:

(1) payment or delivery was made in a reasonable attempt to comply with this [Act];

(2) the holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(3) there is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the administrator, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to this [Act] may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under Section 19(a).

(d) A holder who has delivered property other than money to the administrator pursuant to this [Act] may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another State claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and

to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

Comment

When property is turned over to the State, the holder is relieved of all liability for any turnover made in good faith. Subsection (a) sets forth a definition of good faith which *inter alia* allows the holder to rely on its records if they meet reasonable commercial standards of practice in the industry.

The section also permits the holder to obtain reimbursement for claims it elected to pay to owners who appeared after the property was turned over. If a State in enacting Section 12(b) provides for the payment of interest on property delivered to the administrator, then the holder will add such interest when paying the claim.

If after turnover, any person or another State makes a claim on the holder, the State, upon request, is required to defend the holder and provide indemnification against any liability.

SECTION 11. CREDITING OF DIVIDENDS, INTEREST, AND INCREMENTS

TO OWNER'S ACCOUNT. If property other than money is delivered to the administrator under this [Act], the owner is entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property was an interest bearing demand, savings, or time deposit, including a deposit that is automatically renewable, the administrator shall pay interest at a rate of [insert legal rate] percent a year or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of 10 years after delivery or the date on which payment is made to the owner. Interest on interest bearing property is not payable for any period before the effective date of this [Act], unless authorized by law superseded by this [Act].

Comment

Under this section the owner of interest earning bonds or bank deposits, or dividend

paying stock, will generally receive interest or income which the property earned while in the State's custody.

SECTION 12. PUBLIC SALE OF ABANDONED PROPERTY.

(a) Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the [county] in which the property is to be sold.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of three years after their delivery to the administrator, a person making a claim under this [Act] before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest, and other increments thereon up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under this [Act] after the expiration of the three-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale, and is not entitled to receive any

appreciation in the value of the property occurring after delivery to the administrator, except in a case of intentional misconduct or malfeasance by the administrator.

(c) A purchaser of property at a sale conducted by the administrator pursuant to this [Act] takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

Comment

If the security is stock or other intangible interest in a business association, the administrator is permitted to sell the security, but if the missing owner appears and makes claim for the security within three years after the administrator has sold it, the missing owner is entitled to receive the proceeds of the sale or the market value of the securities at the time the claim is made. Thus there is a genuine incentive for an administrator to hold this property for the requisite three-year period.

Subsection (b) permits an administrator to sell securities at prevailing prices directly to the issuing companies.

This section is not intended as a direction to the administrator to sell "money," although money is included in the definition of property, unless it is a collector's specie having value greater than the face value of the money as cash.

SECTION 13. DEPOSIT OF FUNDS.

[(a) Except as otherwise provided by this section, the] [The] administrator shall promptly deposit in the [general fund] of this State all funds received under this [Act], including the proceeds from the sale of abandoned property under Section 12. [The administrator shall retain in a separate trust fund at least [\$100,000] from which the administrator shall pay claims duly allowed.] The administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company, and

the amount due.

[(b) Before making a deposit to the credit of the [general fund], the administrator may deduct:

- (1) expenses of sale of abandoned property;
- (2) costs of mailing and publication in connection with abandoned property;
- (3) reasonable service charges; and
- (4) expenses incurred in examining records of holders of property and in

collecting the property from those holders.]

Comment

This section increases from \$25,000 to \$100,000 the sum which is recommended to be retained in a trust account for payment of claims. It is contemplated that the amount of the trust fund which is ultimately established will reflect a State's experience in paying owners' claims.

SECTION 14. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY.

(a) After property has been paid or delivered to the administrator under this [Act], another State may recover the property if:

(1) the property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other State and the other State establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that State and under the laws of that State the property has escheated or become subject to a claim of abandonment by that State;

(2) the property was paid or delivered to the custody of this State because the laws of the other State did not provide for the escheat or custodial taking of the property, and under

the laws of that State subsequently enacted the property has escheated or become subject to a claim of abandonment by that State;

(3) the records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another State and under the laws of that State the property has escheated or become subject to a claim of abandonment by that State;

(4) the property was subjected to custody by this State under Section 4(6) and under the laws of the State of domicile of the holder the property has escheated or become subject to a claim of abandonment by that State; or

(5) the property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other State and delivered into the custody of this State under Section 4(7), and under the laws of the other State the property has escheated or become subject to a claim of abandonment by that State.

(b) A claim of another State to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within 90 days after it is presented. The administrator shall allow the claim upon determining that the other State is entitled to the abandoned property under subsection (a).

(c) The administrator shall require another State, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property.

Comment

Section 14 should be read together with Section 4. Sections 4 and 14 are designed to carry out the priority scheme enunciated in *Texas v. New Jersey*, 379 U.S. 674 (1965). In general the State in which the owner had his or her last known address is entitled to claim abandoned property. Where there is insufficient information to permit this assertion of custody, the State of

the holder's domicile takes the property subject to a later claim by the State of the last known address.

Paragraph (1) of subsection (a) provides that if property was paid to the State of the holder's domicile because the last known address of the owner was unknown and it is later established by another State that the last known address of the person entitled to the property was in the other State, the State of domicile should pay the property over to the other State.

Paragraph (2) parallels Section 4, paragraph (4), which permits the State of corporate domicile to take if the State of the last known address does not provide for the escheat or custodial taking of the property. If the State of the last known address subsequently enacts an unclaimed property law which covers the property, the taking State must turn it over.

Paragraph (3) addresses the problem of *Nellius v. Tampax, Inc.*, 394 A.2d 333 (Del. Ch. Ct. 1978) in which the holder's records did not reflect the fact that the record owner had sold the property to another. The court concluded, under *Texas v. New Jersey*, that the holder's records were controlling and that it could properly report and deliver the property to the State in which its records showed the owner to be resident. However, as provided in *Texas v. New Jersey* and in paragraph 4, the State of the owner's actual residence could then claim the property from the State to which it was initially reported.

Paragraph (4), paralleling Section 4(6), provides that property initially claimed under a "contacts" test because there was no last known address and the State of domicile had no applicable unclaimed property law may be reclaimed by the State of corporate domicile if it enacts an applicable unclaimed property law.

Subsection (c) provides that the State that initially receives property later claimed by another State may require an indemnification agreement from the claiming State.

SECTION 15. FILING CLAIM WITH ADMINISTRATOR; HANDLING OF CLAIMS BY ADMINISTRATOR.

(a) A person, excluding another State, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within 90 days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is

required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under Section 16.

(c) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant, together with any dividend, interest, or other increment to which the claimant is entitled under Sections 11 and 12.

(d) A holder who pays the owner for property that has been delivered to the State and which, if claimed from the administrator by the owner would be subject to an increment under Sections 11 and 12, may recover from the administrator the amount of the increment.

Comment

A person claiming property from the administrator is not limited to the number of times the claim may be filed or refiled prior to commencing an action under Section 16. The administrator's decision on a claim does not operate as collateral estoppel or *res judicata*. A person who has commenced an action under Section 16 may also reassert a claim before the administrator if the action has been dismissed without prejudice. A claim which has become the subject of a final judgment may not thereafter be refiled with the administrator.

SECTION 16. ACTION TO ESTABLISH CLAIM. A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the [appropriate] court, naming the [administrator] as a defendant. [If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney's fees.]

Comment

After property is presumed abandoned and reported to the administrator the administrator must attempt to locate the missing owner. Thereafter, if the property has been delivered to the administrator and the owner or his representative appears, the administrator must pay the claim. The owner's rights are never cut off; under this Act, the owner's rights exist in perpetuity. Although some state administrators have urged legislation that would terminate an owner's right to the property merely by the passage of time, such enactments may be unconstitutional. In *Hamilton v. Brown*, 161 U.S. 256, 275, 16 S. Ct. 585, 592, 40 L. Ed. 691, 699, (1896), the Supreme Court held that any procedure by which the State seeks to cut off the owner's title through escheat must include "actual notice by service of summons to all known claimants, and

constructive notice by publication to all possible claimants who are unknown" Any lesser procedure appears to fall short of due process. The history of escheat, as compared with modern unclaimed property legislation, is discussed in "Unclaimed Property and Reporting Forms," Epstein, McThenia & Forslund, ch. 1 (Matt. Bend. 1984).

In any judicial action commenced to recover the property from the administrator, the claimant may proceed *de novo*, and the court will not be limited to a mere review of the administrator's decision.

SECTION 17. ELECTION TO TAKE PAYMENT OR DELIVERY.

(a) The administrator may decline to receive property reported under this [Act] which the administrator considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under this [Act].

Comment

Subsection 17(b) authorizes the administrator to assume custody of property prior to the time for presuming abandonment. Administrators have expressed a need for this authority to enable them to take possession of property, such as the contents of a safe deposit box repository, when the holder is terminating business but the property is not yet reportable. Additionally, other holders which have conducted business in the State and are ceasing operations might use the provisions of this section. The property must be held by the administrator until the abandonment period runs and then the property will be subject to the other provisions of the Act.

SECTION 18. DESTRUCTION OR DISPOSITION OF PROPERTY HAVING NO SUBSTANTIAL COMMERCIAL VALUE; IMMUNITY FROM LIABILITY. If the administrator determines after investigation that property delivered under this [Act] has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer or against the holder for or on account of an act of the administrator under this section, except for

intentional misconduct or malfeasance.

Comment

This section provides for the disposition of property which has no commercial value. As an example, the contents of safety deposit boxes often include such items as rent receipts, personal correspondence and lapsed insurance policies. In such cases, these contents might have some personal significance to the owner, which the administrator would take into consideration in determining for what period of time he will hold the property awaiting a claim by the owner. However, in the usual situation there will be no interest to be preserved by maintaining this property under state custody.

Under this section the administrator would be free to retain property having no commercial value. Further, the administrator could transfer it to other agencies or institutions which might have an interest in the property because of its historical value or other independent significance.

SECTION 19. PERIODS OF LIMITATION.

(a) The expiration, before or after the effective date of this [Act], of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by this [Act].

(b) An action or proceeding may not be maintained by the administrator to enforce this [Act] in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

Comment

Subsection (a) is consistent with cases such as *People v. Marshall Field & Co.*, 83 Ill. App. 3d 811, 404 N.E.2d 368 (1980), *Screen Actors Guild, Inc. v. Cory*, 91 Cal.App.3d 111, 154 Cal.Rptr. 77 (1979), and *State v. Jefferson Lake Sulphur Co.*, 36 N.J. 577, 178 A.2d 329 (1962). It also abrogates another contractual condition often asserted as a defense to reporting property otherwise presumed abandoned, the failure to present the evidence of indebtedness.

Subsection (a) is written to insure also that although the owner's claim against the holder may be barred by the statute of limitations prior to the effective date of the Act, the holder is not relieved of his obligation to pay abandoned property to the administrator. The Comment to Section 16 of the 1966 Act noted that local law must be consulted in order to ascertain whether legislation constitutionally may be enacted reviving a cause of action barred by the statute of limitations. This issue has been litigated in several States, *e.g.*, *Country Mutual Insurance Co. v. Knight*, 40 Ill.2d 523, 240 N.E.2d 612 (1968); *Douglas Aircraft Co. v. Cranston*, 24 Cal.Rptr. 851, 374 P.2d 819 (1962); *cf. Standard Oil v. New Jersey*, 5 N.J. 281, 74 A.2d 565 (1950). Even though the statute of limitations has run before the effective date of the Act, the holder may be required to report and deliver the property to the State if the holder does not regularly enforce the statute. *See South Carolina Tax Commission v. Metropolitan Life Insurance Co.*, 266 S.C. 34, 221 S.E.2d 522 (1975). *But see State of Washington v. Puget Sound Power & Light Co.*, 103 Wash.2d 501, 694 P.2d 7, 10 (1985).

Subsection (b) provides that an administrator must commence an action against a holder within 10 years after the time the property was first reported or specifically placed in issue. The 1995 amendment clarifies existing law and codifies the holdings of abandoned property cases that have ruled on issues of limitations. *See Blue Cross of Northern California v. Cory*, 174 Cal. Rptr. 901, 913, 120 Cal. App.3d 743 (App., 1981) (no statute of limitations will commence to run against the State until after the holder duly reports in compliance with the unclaimed property act); *Travelers Express Co., Inc. v. Cony*, 664 F.2d 763 (9th Cir. 1981) (statute of limitations commences to run only after filing of report which contains written explanation of why property is not subject to the act); *Employers Insurance of Wausau v. Smith*, 453 N.W.2d 856 (Wis. 1990) (filing of report essential to running of statute of limitations, since unclaimed property act depends on self-reporting); *Sennet v. Insurance Co. of North America*, 432 Pa. 5215, 247 A.2d 774, 777-78 (1968) (same; "INA simply has to take its stand: if it reports the holding [of funds in issue] (as a precautionary measure), the statute will run; if it does not, the Commonwealth is not precluded . . ."); *State of New Jersey v. U.S. Steel Corporation*, 22 N.J. 341, 126 A.2d 168 (1956) (same); *Treasurer and Rec. Gen. v. John Hancock Mut. Life Ins. Co.*, 388 Mass. 410, 446 N.E.2d 1376 (1983) (same). The provision also parallels the Internal Revenue Code, 26 U.S.C. sec. 6501(c). Since the Unclaimed Property Act is based on a theory of truthful self-reporting, a holder which conceals property, wilfully or otherwise, cannot expect the protection of the stated limitations period.

SECTION 20. REQUESTS FOR REPORTS AND EXAMINATION OF RECORDS.

(a) The administrator may require a person who has not filed a report, or a person who the administrator believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under this [Act], describe property not previously reported or as to

which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

(b) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this [Act]. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this [Act]. The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(c) The administrator at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator has given the notice required by subsection (b) to both the association or organization and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees, or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(1) used by the administrator in the course of an action to collect unclaimed property or otherwise enforce this [Act];

(2) used in joint examinations conducted with or pursuant to an agreement with another State, the federal government, or any other governmental subdivision, agency, or instrumentality;

(3) produced pursuant to subpoena or court order; or

(4) disclosed to the abandoned property office of another State for that State's use in circumstances equivalent to those described in this subdivision, if the other State is bound to

keep the documents and papers confidential.

(e) If an examination of the records of a person results in the disclosure of property reportable under this [Act], the administrator may assess the cost of the examination against the holder at the rate of [\$200] a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) may be assessed only against the business association or financial organization.

(f) If, after the effective date of this [Act], a holder does not maintain the records required by Section 21 and the records of the holder available for the periods subject to this [Act] are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

Comment

This section is designed to facilitate compliance with the Act. Subsection (a) provides for the filing of a negative report if the administrator requires such a report and will minimize disruption which would otherwise be caused to the holder if an examination of records instead were conducted by the administrator. Subsection (b) is based on Section 30 of the 1981 Act. Aside from the requirement that the administrator conduct the examination at reasonable times and upon reasonable notice, the only limitations on the administrator's right to examine are constitutional limitations. Even though the Fourth Amendment does not extend as broadly to corporations as to individuals, *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 90 L.Ed. 614, 66 S.Ct. 494 (1946), inspections of commercial property may be unreasonable if they are not authorized by law or are unnecessary for the furtherance of a governmental interest. *Donovan v. Dewey*, 452 U.S. 594, 56 L.Ed.2d 486, 98 S.Ct. 1942 (1980). This Act is deemed to meet that standard. Also, since one of the dual purposes of this Act is the collection of revenue, reference may be made to the cases holding that it is not an unreasonable search to require taxpayers to produce their books and records. See Annot., "Constitutionality of statutory provisions for examination of records, books, or documents for taxation purposes," 103 ALR 522.

Subsection (c) is intended to provide a useful method whereby the administrator can conduct a single examination of a dividend disbursing agent or transfer agent serving in such

capacity for numerous business associations.

Subsection (f) permits the use of estimates in instances where the holder has failed to report and deliver property that is abandoned and no longer has reasonably accessible records sufficient to prepare a specific report. Additionally, if the holder fails to maintain records of the last known address, States can assert claims based on any other records which might exist. Resort may be had to computer codes. While the holding in *Texas v. New Jersey* is intended to prevent multiple liability of holders, this subsection, viewed as a penalty for failure to maintain records of names and last known address, is not inconsistent with that decision. That part of subsection (f) which permits the State to make estimates was prospective only from the date of adoption of the 1981 Act. This Act expressly states the bases on which estimates may be made. Thus, the State may use estimating techniques -- where a holder has not maintained records as required by statute -- based on industry averages, and may rely on inferences that may be based on statistics drawn from a broader basis than that of the holder in question who has failed to keep records. This section, together with Section 23, also clarifies the administrator's authority to enter into agreements to enforce the State's custodial powers in all States.

SECTION 21. RETENTION OF RECORDS.

(a) Except as otherwise provided in subsection (b), a holder required to file a report under Section 7 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the administrator.

(b) A business association or financial organization that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the State and date of issue, for three years after the holder files the report.

Comment

This section does not require that the holder in the first instance obtain the address of the owner. For example, a record of the address of the purchaser or recipient of a gift certificate customarily is not obtained.

Initially, the period for which records of address must be obtained is established at 10 years from the date the property was first reportable as abandoned property. However, this

section permits a State to shorten this period by rule. Because the reporting practices of holders vary, an administrator will want to consider such factors as the burden imposed on the holder in maintaining such records, the opportunity of returning the property, and the type of business of the holder. For example, in the case of property that would be reportable in the aggregate without the name and address of the apparent owner under Section 7, a State might adopt a rule providing for a relatively short record retention period on condition that the holder maintain a record sufficient to satisfy the requirements of *Texas v. New Jersey* that there be a last known address or that the State can prove that the last known address of the creditor was within its borders.

Subsection (b) is designed to assure that the information required for asserting a claim to travelers checks and money orders is retained by the issuers of travelers checks and money orders.

SECTION 22. ENFORCEMENT. The administrator may maintain an action in this or another State to enforce this [Act]. The court may award reasonable attorney's fees to the prevailing party.

Comment

Although generally an action would be brought in an administrator's own State, action to enforce the Act may also be brought in the courts of another State. See Section 23. See also, *Commonwealth of Pennsylvania v. Kervick*, 60 N.J. 289, 288 A.2d 289 (1972).

SECTION 23. INTERSTATE AGREEMENTS AND COOPERATION; JOINT AND RECIPROCAL ACTIONS WITH OTHER STATES.

(a) The administrator may enter into an agreement with another State to exchange information relating to abandoned property or its possible existence. The agreement may permit the other State, or another person acting on behalf of a State, to examine records as authorized in Section 20. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The administrator may join with another State to seek enforcement of this [Act] against any person who is or may be holding property reportable under this [Act].

(c) At the request of another State, the attorney general of this State may maintain an action on behalf of the other State to enforce, in this State, the unclaimed property laws of the other State against a holder of property subject to escheat or a claim of abandonment by the other State, if the other State has agreed to pay expenses incurred by the attorney general in maintaining the action.

(d) The administrator may request that the attorney general of another State or another attorney commence an action in the other State on behalf of the administrator. With the approval of the attorney general of this State, the administrator may retain any other attorney to commence an action in this State on behalf of the administrator. This State shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney's fees may be paid from money received under this [Act]. [The administrator may agree to pay expenses and attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action.] Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this [Act].

Comment

To avoid conflicts between the administrator's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the administrator, before adopting, amending or repealing rules, should advise and consult with administrators in other jurisdictions that adopt this Act substantially and take into consideration the rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

Cooperation among States is essential if abandoned property programs are to be efficiently administered. In recent years several States have joined together to audit major holders. Additionally, several States have entered into agreements to act as collection agents for each other. Interstate cooperation and the development of uniform reporting forms and uniform regulations will be of assistance to holders as well as program administrators. This section encourages joint agreements and cooperation among the States. An agreement among the States might expressly relieve holders from reporting piecemeal to separate States. Instead, they might be able to file a single report of all abandoned property, wherever located, and regardless of the

address of the owner.

Reciprocal agreements envisioned under subsection (c) do not require the consent of Congress under the Compact Clause of the Constitution, Art. I, § 10, cl. 3. The Supreme Court has held that the restriction of the Compact Clause is limited to combinations or agreements that tend to increase the political power of the States to such an extent that it interferes with the supremacy of the United States. *United States Steel v. Multi-State Tax Commission*, 434 U.S. 452 (1978). In *Multi-State Tax Commission* the Court upheld a tax compact, that had not been approved by Congress creating a permanent administrative body to perform audits of multi-state taxpayer operations, and at the request of a member State, to sue to enforce the audits in the courts of the member States.

This section simply authorizes an economical approach to enforcing a State's claim under *Texas v. New Jersey*. Each State retains discretion to bring suit or to decide against such action, remaining free to adopt its own abandoned property policies. The position of the States will not be politically improved at the expense of the federal government although the process for claiming abandoned property will be more efficient.

Action by one State for another is expressly permitted by this section. In some cases the administrator of a State may deem it wise to seek counsel in a foreign jurisdiction. There may be small claims which would not justify individual action by the claimant State in a foreign forum, but if several States join forces and retain counsel in the holder State to sue for all of them, it might be administratively justified. This section expressly permits such joint action.

SECTION 24. INTEREST AND PENALTIES.

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this [Act] shall pay to the administrator interest at the annual rate of [12 percent] [two percentage points above the annual rate of discount in effect on the date the property should have been paid or delivered for the most recent issue of 52-week United States Treasury bills] on the property or value thereof from the date the property should have been reported, paid or delivered.

(b) Except as otherwise provided in subsection (c), a holder who fails to report, pay, or deliver property within the time prescribed by this [Act], or fails to perform other duties imposed by this [Act], shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of [\$200] for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of [\$5,000].

(c) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this [Act], or willfully fails to perform other duties imposed by this [Act], shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of [\$1,000] for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of [\$25,000], plus 25 percent of the value of any property that should have been but was not reported.

(d) A holder who makes a fraudulent report shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of [\$1,000] for each day from the date a report under this [Act] was due, up to a maximum of [\$25,000], plus 25 percent of the value of any property that should have been but was not reported.

(e) The administrator for good cause may waive, in whole or in part, interest under subsection (a) and penalties under subsections (b) and (c), and shall waive penalties if the holder acted in good faith and without negligence.

Comment

A major weakness of the 1966 Act was its ineffective penalty provision. Although the 1981 Act increased penalties for non-compliance, voluntary compliance with the Act continued to be a problem. In this Act, compliance failures not accompanied by willfulness are dealt with by moderate increases in the applicable penalties, and the administrator simultaneously is given authority to waive both interest and penalties where the holder has attempted in good faith to comply, or where the failure has been due to excusable neglect. Where the holder's failure is willful or fraudulent, and not in good faith, penalties are increased more substantially.

Criminal penalties, which were the sole enforcement mechanism of the 1954 Act and which were retained in the 1981 Act have been eliminated, as they were not effective and rarely, if ever, pursued.

The provision for the discretionary waiver of interest upon a showing of good cause is intended to apply to situations in which the holder has attempted to comply with the Act. Establishment of "good cause" is likely to be difficult where the holder has failed to file a report.

SECTION 25. AGREEMENT TO LOCATE PROPERTY.

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the administrator. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the apparent owner, and states the value of the property before and after the fee or other compensation has been deducted.

(c) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) An agreement covered by this section which provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney's fees to an owner who prevails in the action.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than unconscionable compensation.

Comment

This section is intended to enhance the likelihood that the owner of the abandoned property will be located by the efforts of the State, and will receive a return of the property without payment of a "finder's fee." In the past, it appears to have been the practice in many States for unclaimed property locators or heir finders to utilize the State's lists of names and addresses of missing owners to contact them and propose to find their property for them for a fee, before the State has had an opportunity to locate the missing owners. Some States have enacted legislation that prohibits examination of these lists by anyone except an apparent owner or other person having a legal interest in the property, but in many States that kind of provision may be in conflict with the State's public records laws.

Subsections (b) and (d) apply to agreements entered into at any time. These subsections apply to all finders' and locators' contracts, regardless of when the contract is made, including agreements with an owner as a result of a holder providing to private parties, the holder's information regarding an inactive account.

This section is not intended to apply to situations such as the probating of an estate, which may incidentally include a necessity of locating unclaimed property. Agreements in such cases do not have as their principal purpose, the rendition of services to locate, deliver or recover unclaimed property. This section also does not apply to agreements for legal representation of an owner who is claiming property the identity of which is already known to the owner.

SECTION 26. FOREIGN TRANSACTIONS. This [Act] does not apply to property held, due, and owing in a foreign country and arising out of a foreign transaction.

SECTION 27. TRANSITIONAL PROVISIONS.

(a) An initial report filed under this [Act] for property that was not required to be reported before the effective date of this [Act] but which is subject to this [Act] must include all items of property that would have been presumed abandoned during the 10-year period next preceding the effective date of this [Act] as if this [Act] had been in effect during that period.

(b) This [Act] does not relieve a holder of a duty that arose before the effective date of this [Act] to report, pay, or deliver property. Except as otherwise provided in Section 19(b), a holder who did not comply with the law in effect before the effective date of this [Act] is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

Comment

Paragraph (a) is retained from the 1981 Act and deals with the problem of how far back a holder must check its records to determine what property not subject to the prior Act must be paid to the State under this Act. Thus, property which was not covered by any unclaimed property law prior to adoption of the 1981 Act, but was covered by that Act, continues to be covered by this Act if the obligation was incurred not more than 10 years prior to adoption of the 1981 Act and the statute of limitations is not tolled under Section 19(b). For example, if a State enacts this Act effective January 1, 1996 for property not previously presumed abandoned, the holder must report it if, as of January 1, 1986, it had been unclaimed for the abandonment period. A similar provision is found in Section 11(g) of the 1966 Act.

Paragraph (b) provides that if a State had an unclaimed property law prior to the adoption of this Act, a holder is not relieved of his duty to report and pay over the property abandoned under the Act then existing. Except as otherwise provided in Section 19(b), a holder who did not comply with the law in effect before the effective date of this Act is subject to the applicable provisions for enforcement and penalties which then existed and which are continued in effect for the purpose of this section.

SECTION 28. RULES. The administrator may adopt [pursuant to the Administrative Procedures Act] rules necessary to carry out this [Act].

SECTION 29. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among States enacting it.

SECTION 30. SHORT TITLE. This [Act] may be cited as the Uniform Unclaimed Property Act (1995).

SECTION 31. SEVERABILITY CLAUSE. If any provision of this [Act] or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 32. EFFECTIVE DATE. This [Act] takes effect

SECTION 33. REPEALS. The following acts and parts of acts are repealed:

(a)

(b)

(c)